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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,476	12/18/2000	Leo G.J. Frenken	P 0275850 T 7060C	9341

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EXAMINER

COLLINS, CYNTHIA E

ART UNIT PAPER NUMBER

1638

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/737,476

Applicant(s)

FRENKEN ET AL.

Examiner

Cynthia Collins

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) a set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-7, 9 and 14.
Claim(s) withdrawn from consideration: 8 and 10-13.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

Cynthia Collins 3/2/05

Continuation of 3. NOTE:

(a) the proposed amendments to claim 1 raise new issues that would require further consideration and/or search in that the addition of the limitation "selected" cellular compartment would require further consideration under 35 USC 112, 1st and 2d paragraphs and 35 USC 102 and 103, the addition of the limitations "functional heavy chain antibody" and an active fragment of a "heavy chain antibody" would require further consideration under 35 USC 112, 1st and 2d paragraphs and 35 USC 102 and 103, creation of the limitation of "an active fragment of said immunoglobulin devoid of a variable light chain domain" by deletion of "said fragment being" would require further consideration under 35 USC 112, 1st and 2d paragraphs and 35 USC 102 and 103, addition of the limitation "wherein antigen-binding capacity is located in a single binding domain" would require further consideration under 35 USC 112, 1st and 2d paragraphs and 35 USC 102 and 103 .

(b) the proposed amendments to claim 1 raise the issue with new matter in that the limitation "selected" cellular compartment does not appear to find support in the specification as filed, and the limitation "wherein antigen-binding capacity is located in a single binding domain" in reference to "an antibody that is a heavy chain immunoglobulin devoid of a variable light chain domain, or an active fragment of said immunoglobulin devoid of a variable light chain domain", or in reference to "a functional heavy chain antibody or an active fragment of heavy chain antibody showing the antigen binding activity of the antibody" does not appear to find support in the specification as filed.

Continuation of 5. Applicant's reply has overcome the following rejection(s): the proposed amendment of claim 1 to recite positive method steps (introduction of a DNA sequence into a plant and its expression) would overcome the outstanding rejections of claims 1-7 and 9 under 35 USC 112, 2d paragraph and 35 USC 101 .

Continuation of 11. does NOT place the application in condition for allowance because: the proposed amendments to claim 1 do not distinguish Applicant's methods from the methods taught by the prior art, which teaches methods of producing a variety of different types of antibodies and immunoglobulins, including heavy chain immunoglobulins obtainable from camelids, in plant cells, and which teaches the expression of antibodies and immunoglobulins in cellular compartments of plant cells.